



## INTERIOR BOARD OF INDIAN APPEALS

Executive Branch of the Cheyenne and Arapaho Tribes and Housing Authority of the  
Cheyenne-Arapaho Tribes of Oklahoma v. Southern Plains Regional Director, Bureau of  
Indian Affairs

54 IBIA 332 (04/23/2012)

Related Board case:  
54 IBIA 276



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

EXECUTIVE BRANCH OF THE	)	Order Vacating Decision and
CHEYENNE AND ARAPAHO	)	Remanding
TRIBES AND HOUSING	)	
AUTHORITY OF THE	)	
CHEYENNE-ARAPAHO TRIBES	)	
OF OKLAHOMA,	)	
Appellants,	)	
	)	Docket No. IBIA 12-097
v.	)	
	)	
SOUTHERN PLAINS REGIONAL	)	
DIRECTOR, BUREAU OF	)	
INDIAN AFFAIRS,	)	
Appellee.	)	April 23, 2012

On April 16, 2012, the Board of Indian Appeals (Board) received a notice of appeal from the Executive Branch of the Cheyenne and Arapaho Tribes (Tribe) and the Housing Authority of the Cheyenne-Arapaho Tribes of Oklahoma (collectively, Appellants), seeking review of a March 12, 2012, decision (Decision) by the Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Regional Director declined a request from the Executive Director of the Tribe's Housing Authority to enter into an Indian Self-Determination and Education Assistance Act (ISDA) contract with the Tribe to provide Housing Improvement Program (HIP) services to tribal members. The Regional Director relied solely on "the record previously submitted to [the Board]" in a related appeal involving an identical HIP proposal from Appellants, *Executive Branch of the Cheyenne and Arapaho Tribes v. Southern Plains Regional Director*, Docket No. IBIA 12-051 (*Executive Branch I*).<sup>1</sup>

We summarily vacate the Decision and remand the matter to BIA for approval of the HIP contract proposal because in *Executive Branch I*, the Board, *with an explicit nonobjection*

---

<sup>1</sup> *Executive Branch I* is among the consolidated appeals pending before the Board and currently in briefing in *Bighorse, et al. v. Southern Plains Regional Director*, Docket Nos. 12-020, 12-021, 12-051, 12-065, 12-066.

from the Regional Director, placed another decision of the Regional Director into effect for the specific purpose of executing, and completing the HIP contract proposed by Appellants. Regardless of how *Executive Branch I* may ultimately be resolved, the more immediate issue — clearing the way for BIA to execute Appellants’ HIP contract proposal to ensure the delivery of needed housing services to tribal members — was briefed by the parties and addressed by the Board. Because the Regional Director’s sole justification for declining the HIP contract proposal was reliance on “the record” in *Executive Branch I*, and because the record in *Executive Branch I* includes the Regional Director’s assent to completion of the contract, the Regional Director’s sole ground for declination cannot be sustained. We therefore vacate the Decision and remand the matter for approval of Appellants’ HIP contract proposal and execution of the contract.

### Background

In *Executive Branch I*, Appellants appealed to the Board from an earlier decision in which the Regional Director declined to approve their ISDA HIP contract proposal.<sup>2</sup> In that earlier decision, the Regional Director declined to accept Appellants’ HIP contract proposal “[d]ue to” a lack of clarity over which individual, Janice Prairie Chief-Boswell or Leslie Wandrie-Harjo, had the constitutional authority to act on behalf of the Tribe as its Governor.<sup>3</sup> Subsequently, the Regional Director issued a decision to recognize Boswell, on an interim basis (“Interim Recognition Decision”), as Governor of the Tribe, for the limited purpose of processing ISDA contract proposals.<sup>4</sup> The Interim Recognition Decision was appealed to the Board by Wandrie-Harjo, and that appeal remains pending.<sup>5</sup>

Due to concerns about the potential for the interruption of needed housing services to members of the Tribe, on January 4, 2012, the Board solicited briefing from the parties

---

<sup>2</sup> The Decision that is the subject of the present appeal declined a December 19, 2011, proposal submitted by Orville Whiteskunk as Executive Director of the Housing Authority. The decision on appeal in *Executive Branch I* declined a June 14, 2011, proposal submitted by Ida Hoffman as Acting Director of the Housing Authority. The Decision concedes that in substance the proposals are identical, and the record indicates that Whiteskunk resubmitted the same proposal with additional documentation intended to address issues raised in the earlier decision rejecting the Hoffman proposal.

<sup>3</sup> Letter from Regional Director to Acting Executive Director, Housing Authority, Sept. 9, 2011, at 2 (unnumbered) (September 9 Decision) (Notice of Appeal, Ex. 6). Both Boswell and Wandrie-Harjo claim to be Governor of the Tribe.

<sup>4</sup> See Letter from Regional Director to Boswell, Dec. 15, 2011 (Notice of Appeal, Ex. 2).

<sup>5</sup> See *Wandrie-Harjo and Third Legislature v. Southern Plains Regional Director*, Docket Nos. 12-065 & 12-066 (consol. with *Bighorse*, see *supra* note 1).

in *Executive Branch I* on whether the Regional Director's Interim Recognition Decision should be placed into immediate effect for purposes of renewing and executing Appellants' HIP contract, i.e., approving the proposal from Boswell and the Housing Authority serving under her administration. The Board asked the parties to address whether placing the Interim Recognition Decision into immediate effect would be appropriate to "provide a basis for BIA to execute the ISDA HIP proposal" in order "*to ensure the continuation of services to tribal members through renewal*" of the contract.<sup>6</sup>

The Boswell administration supported placing the Interim Recognition Decision into effect for purposes of executing the HIP contract. Wandrie-Harjo objected to placing the Interim Recognition Decision into effect, but did not address the HIP contract proposal or suggest any other means for the Tribe to administer HIP housing services to its members.<sup>7</sup> The Regional Director, through Solicitor's office counsel, represented to the Board that he had "no objection to the Board making the Interim Recognition Decision effective immediately *in order to ensure the continuation of services to tribal members.*"<sup>8</sup> The Regional Director neither identified nor suggested that any grounds stood in the way of BIA's approval and execution of the HIP contract proposal, if the Interim Recognition Decision were made effective, nor did Wandrie-Harjo.

On February 3, 2012, the Board placed the Interim Recognition Decision into immediate effect for the purpose of completing the ISDA HIP contract, and authorized BIA to execute the contract accordingly.<sup>9</sup> The Board "agree[d] with the Boswell faction that it is in the (tribal) public interest *to approve* the HIP proposal, through which the Tribe may provide needed housing services to tribal members."<sup>10</sup>

---

<sup>6</sup> *Executive Branch I*, Order for Expedited Briefing, Jan. 4, 2012, at 4 (emphasis added) (copy added to record).

<sup>7</sup> At the time the issue was briefed by the parties, the Board had pending a related appeal by the Third Legislature of the Tribe from a decision by the Regional Director disapproving a competing May 2, 2011, HIP proposal from Reggie Wassana, also on behalf of the Housing Authority, but apparently aligned with the Wandrie-Harjo faction. Neither Wandrie-Harjo nor Wassana appealed BIA's disapproval of that proposal, and the Board subsequently dismissed the Third Legislature's appeal for failure to demonstrate standing. *Third Legislature of the Cheyenne and Arapaho Tribes v. Acting Southern Plains Regional Director*, 54 IBIA 276 (2012).

<sup>8</sup> *Executive Branch I*, Solicitor's Office Entry of Appearance and Response, Jan. 9, 2012 (emphasis added).

<sup>9</sup> *Bighorse*, Docket No. 12-020 & consol., Order Placing Interim Recognition Decision into Effect, Feb. 3, 2012, at 5-8 (Notice of Appeal, Ex. 3).

<sup>10</sup> *Id.* at 7 (emphasis added).

On March 12, 2012, following several inquiries from Appellants, the Regional Director again declined to approve the Boswell administration's HIP proposal, referencing only the record in *Executive Branch I* as support for the Decision. The Decision did not mention the Regional Director's Interim Recognition Decision or the Board's order placing that decision into effect for the purpose of approving and executing Appellants' proposed HIP contract.

### Discussion

We agree with Appellants that the Decision declining the Boswell administration's HIP contract proposal is contrary to the Board's February 3, 2012, order that placed the Interim Recognition Decision into effect for the express purpose of allowing BIA to complete and execute the contract. The representations made to the Board by the Regional Director in *Executive Branch I* concerning the HIP contract proposal can only be construed as giving his assent to approval of the contract, if allowed to do so through making the Interim Recognition Decision effective. The Board allowed him to do so by making the Interim Recognition Decision effective for that very purpose. At no time did the Regional Director suggest that recognizing Boswell as Governor of the Tribe, for the purpose of completing the HIP proposal, would *not* provide the necessary and sufficient basis for BIA to execute the contract to allow the Tribe to provide needed housing services to its members.<sup>11</sup> Nor did the Regional Director return to the Board in *Executive Branch I* to seek modification of our order.

---

<sup>11</sup> We note that the September 9 Decision questioned whether the Housing Authority was authorized to submit a HIP contract proposal on behalf of the Tribe. But as mentioned earlier, the Regional Director attributed his uncertainty to the "lack of clarifying information" about whether Boswell or Wandrie-Harjo had the constitutional authority to act on behalf of the Tribe. The Regional Director explicitly found that Boswell concurred in the Housing Authority's proposal from Hoffman, and there is no doubt that Boswell supports the identical proposal re-submitted by the Housing Authority through Whiteskunk. Moreover, Appellants enclose with their appeal a December 10, 2011, Tribal Council resolution clarifying that the Housing Authority is authorized to apply for the HIP contract on behalf of the Tribe. *See* Notice of Appeal, Ex. 7.

We also note that while the September 9 Decision cited three of the criteria for declining an ISDA contract proposal, 25 C.F.R. § 900.22(a)-(c), those criteria were cited only in the context of the political uncertainty caused by the tribal dispute. The Regional Director made no findings, nor has any party suggested, that any declination criteria would apply to the Housing Authority's actual administration of the HIP contract.

It was arbitrary and capricious for the Regional Director to decline to approve the Boswell administration's HIP proposal based on the record submitted to the Board in *Executive Branch I*, because the Regional Director completely ignored the proceedings in that case that expressly contemplated and authorized BIA's approval and execution of the contract, and the Regional Director ignored his own previous nonobjection to the Board concerning the completion of the contract.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board vacates the Regional Director's Decision and remands the matter for approval of the HIP contract proposal and execution of the contract.

I concur:

\_\_\_\_\_  
// original signed  
Steven K. Linscheid  
Chief Administrative Judge

\_\_\_\_\_  
// original signed  
Debora G. Luther  
Administrative Judge